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September 30, 2004

## **BY HAND DELIVERY**

The Honorable Mark J. Langer  
Clerk  
United States Court of Appeals for the  
District of Columbia Circuit  
333 Constitution Avenue, NW  
Room 5423  
Washington, DC 20001

**Re: *Cinergy Services, Inc. v. FERC*, No. 04-1299  
(consolidated with Nos. 04-1301 and 04-1303)**

Dear Mr. Langer:

Enclosed for filing in the above-captioned case please find an original and four (4) copies of the Motion for Leave to Intervene of Cottonwood Energy Company LP. Enclosed for filing also please find an original and four (4) copies of Cottonwood Energy Company LP's Corporate Disclosure Statement.

An additional two (2) copies of both documents are enclosed to be date stamped and returned in the enclosed envelope. Thank you for your assistance with this matter.

Respectfully submitted,



Neil L. Levy

Counsel for ~~Movant-Intervenor~~  
**Cottonwood Energy Company LP**

Enclosures

cc: All parties w/enclosures

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CINERGY SERVICES, INC., <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	Case No. 04-1299
v.	)	
	)	(consolidated with
FEDERAL ENERGY REGULATORY	)	Nos. 04-1301 and 04-1303)
COMMISSION,	)	
	)	
Respondent.	)	
	)	

**MOTION FOR LEAVE TO INTERVENE  
OF COTTONWOOD ENERGY COMPANY LP**

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and Rule 15(b) of the Circuit Rules of this Court, Cottonwood Energy Company LP (“Cottonwood”) respectfully moves for leave to intervene in the above-captioned proceeding.

**BACKGROUND**

Petitioners Cinergy Services, Inc. (No. 04-1299); Southern Company Services, Inc. (No. 04-1301); and the Colorado Office of Consumer Counsel, the Rhode Island Attorney General, the New Mexico Attorney General, and the Utah Committee of Consumer Services (No. 04-1303) have filed Petitions for Review of the following orders of the Federal Energy Regulatory Commission (“FERC” or “Commission”):

*AEP Power Mktg., Inc., et al.*, Order on Triennial Market Power Updates and Announcing New, Interim Generation Market Power Screen and Mitigation Policy, Docket No. ER96-2495, *et al.*, 97 FERC ¶ 61,219 (November 20, 2001);

*AEP Power Mktg., Inc., et al.*, Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, Docket No. ER96-2495, *et al.* (December 20, 2001);

*AEP Power Mktg., Inc., et al.*, Order on Rehearing and Modifying Interim Generation Market Power Analysis and Mitigation Policy, Docket No. ER96-2495, *et al.*, 107 FERC ¶ 61,018 (April 14, 2004);

*AEP Power Mktg., Inc., et al.*, Order on Rehearing, Docket No. ER96-2495, *et al.*, 108 FERC ¶ 61,026 (July 8, 2004).

The Court consolidated the petitions for review on September 16, 2004. (It appears that the consolidated petitions are also related to *Entergy Services, Inc. v. FERC*, Case No. 04-1241.)

The Court has directed the petitioners to file a docketing statement and statement of issues on or before October 18, 2004.

The orders on review concern the standards employed by the Commission for assessing generation market power and for granting electric utilities market-based rate authority. Under the Commission's rules, in order to sell power at market-based rates, a utility must demonstrate that neither it nor its affiliates are able to exercise market power in the generation and transmission of electric energy or otherwise erect barriers to entry by potential competitors.

On April 14, 2004, the Commission initiated a formal rulemaking proceeding to complete a comprehensive generic review of the appropriate analysis for granting market-based rate authority. The rulemaking will address issues concerning generation market power, transmission market power, other barriers to competition, and affiliate abuse and reciprocal dealing. *See AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 (2004). In the orders on review, the Commission set

forth the interim standards for determining when an electric utility has the ability to exercise market power that will apply while the Commission's rulemaking proceeding remains pending.

### ARGUMENT

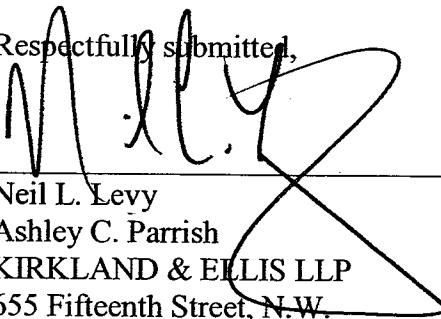
Cottonwood seeks leave to intervene because it has a direct and substantial interest in these proceedings that cannot be adequately represented by any other party. Cottonwood is a subsidiary of InterGen (North America), Inc. that owns and operates a 1200 MW natural gas-fired, combined cycle power facility located south of Deweyville, in Newton County, Texas. InterGen and its affiliates develop, own, and operate independent power facilities throughout the United States and abroad.

Cottonwood's parent (InterGen) participated in the proceedings below and submitted comments supporting the Commission's pro-competitive policies. Changes in the Commission's orders on review — in particular, changes that would allow utilities with market power to charge market-based rates — could potentially have a significant affect on Cottonwood's business by, among other things, not allowing Cottonwood to compete on a level playing field with generators owned and operated by utility-affiliated entities. Accordingly, Cottonwood supports the Commission's standards and policies that are designed to achieve the salutary goal of encouraging fully competitive bulk power markets. Cottonwood's interests are directly contrary to petitioners insofar as they seek to rollback the Commission's pro-competitive policies and make it easier for electric utilities to erect barriers to competition. Granting Cottonwood leave to intervene is therefore appropriate in order to ensure that Cottonwood's interests are adequately protected.

Allowing Cottonwood to participate in these proceedings would not harm this Court or any other party. The Court has not yet decided the motions to intervene filed by other interested parties. Nor has it set a briefing or oral argument schedule.

**WHEREFORE**, Cottonwood respectfully requests that it be permitted to intervene in consolidated Case No. 04-1299.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neil L. Levy", is written over a horizontal line. The signature is stylized and somewhat cursive.

Neil L. Levy  
Ashley C. Parrish  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, N.W.  
Suite 1200  
Washington, DC 20005

**Counsel for Cottonwood Energy Company LP**

Dated: September 30, 2004

## CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that I have this day served a copy of the foregoing documents by first class mail, postage prepaid, upon:

FEDERAL ENERGY REGULATORY  
COMMISSION

(served by hand)

Dennis Lane, Solicitor  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

CINERGY SERVICES, INC.

Diego A. Gómez  
Cinergy Group  
139 East Fourth Street  
Cincinnati, OH 45201

Noel Symons  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005

COLORADO OFFICE OF CONSUMER  
COUNSEL; RHODE ISLAND  
ATTORNEY GENERAL; NEW MEXICO  
ATTORNEY GENERAL; and UTAH  
COMMITTEE OF CONSUMER  
SERVICES

Gerald A. Norlander  
Public Utility Law Project  
90 State Street, Suite 601  
Albany, New York 12207-1715

SOUTHERN COMPANY SERVICES,  
INC.

Mark A. Crosswhite  
Southern Company Services, Inc.  
Post Office Box 2625  
Birmingham, Alabama 35201

Dan H. McCrary  
Jennifer M. Buettner  
Balch & Bingham LLP  
1701 Sixth Avenue North  
Birmingham, Alabama 35203

ELECTRICITY CONSUMERS  
RESOURCE COUNCIL

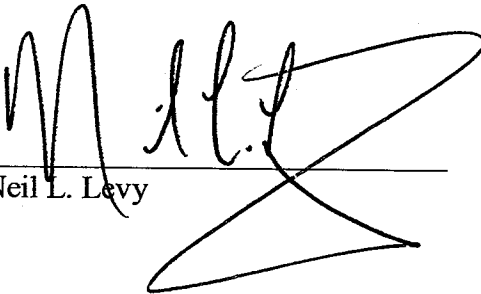
Sara Deutch Schotland  
Cleary, Gottlieb, Steen & Hamilton  
2000 Pennsylvania Avenue, NW  
Suite 9000  
Washington, DC 20006-1801

ALABAMA ELECTRIC COOPERATIVE,  
INC,

D. Biard MacGuineas  
Dykema Gossett  
1300 I Street, NW  
Suite 300, West Tower  
Washington, DC 20005-3306

TUCSON ELECTRIC POWER  
COMPANY

James Carleton Beh  
Jeffrey Martin Jakubiak  
Troutman Sanders  
401 9th Street, NW  
Suite 1000 East  
Washington, DC 20004-2134



Neil L. Levy

Dated: September 30, 2004

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CINERGY SERVICES, INC., *et al.*,

Petitioners,

v.

FEDERAL ENERGY REGULATORY  
COMMISSION,

Respondent.

Case No. 04-1299

(consolidated with  
Nos. 04-1301 and 04-1303)

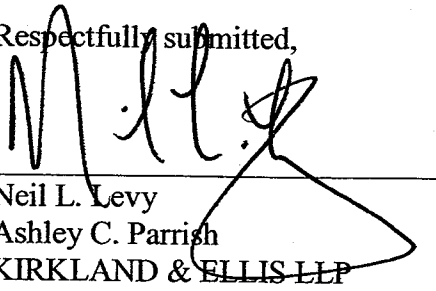
**CORPORATE DISCLOSURE STATEMENT  
OF COTTONWOOD ENERGY COMPANY LP**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of this Court, Cottonwood Energy Company LP (“Cottonwood”) states as follows:

Cottonwood Energy Company LP is wholly owned by Mayflower Limited Partnership. Mayflower Limited Partnership is 98% owned by InterGen (North America), Inc. and 2% owned by Mayflower Holdings, LLC. Mayflower Holdings, LLC is wholly-owned by InterGen (North America), Inc. InterGen (North America), Inc. is wholly-owned by InterGen N.V. InterGen N.V. is 68% owned by Shell Generating (Holdings) B.V., and 32% owned by Bechtel Enterprises Energy B.V. Shell is publicly traded.

InterGen and its affiliates develop, own, and operate independent power facilities throughout the United States and abroad.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "N. L. Levy", is written over a horizontal line. The signature is stylized and extends to the right, crossing the line.

Neil L. Levy  
Ashley C. Parrish  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, N.W.  
Suite 1200  
Washington, DC 20005

**Counsel for Cottonwood Energy Company LP**

Dated: September 30, 2004